Supreme Court of the United States

OCTOBER TERM, 1941

Office - Supreme Court, U. S.
JAN 30 1942
CHARLES ELMORE CROPLEY
CLERK

Nos. 763-769

FRANK FITZGERALD, Trustee for Mt. Forest Fur Farms of America, Inc., *Petitioner,*

v.

GULF REFINING COMPANY OF LOUISIANA, GULF REFINING COMPANY, HUMBLE OIL AND REFINING COMPANY, SHELL OIL COMPANY, INC., FREEPORT SULPHUR COMPANY, and ERNEST COCKRELL, GULF REFINING COMPANY OF LOUISIANA, ET AL., *Respondents.*

No. 770

FRANK FITZGERALD, Trustee for Mt. Forest Fur Farms of America, Inc., *Petitioner,*

v.

ERNEST COCKRELL, His Curator Ad Hoc, BRUCE NUNEZ, and Their Attorneys, S. W. Plauche, and the Law Firm of HEROLD, COUSIN & HEROLD, *Respondents.*

No. 771

FRANK FITZGERALD, Trustee for Mt. Forest Fur Farms of America, Inc., MORAN CORPORATION OF THE SOUTH and ISAAC S. HELLER, *Petitioners,*

v.

ERNEST COCKRELL, SIDNEY L. HEROLD, SUMTER P. COUSIN and SAMUEL L. HEROLD; and S. W. PLAUCHE and S. W. PLAUCHE, Jr., Composing the Law Firm of PLAUCHE & PLAUCHE, *Respondents.*

PETITION FOR REHEARING AND FOR RECONSIDERATION OF PETITION FOR WRITS OF CERTIORARI

JACOB I. WEINSTEIN,
ROBERT S. MARX,
FRANK E. WOOD,
EUGENE D. SAUNDERS,
ELDON S. LAZARUS,
ISAAC S. HELLER,
Attorneys for Petitioners.

THE JOHNSON & HARMON CO., LAW PRINTERS

Supreme Court of the United States

OCTOBER TERM, 1941

Nos. 763-769

FRANK FITZGERALD, Trustee for Mt. Forest Fur Farms of America, Inc., *Petitioner,*

v.

GULF REFINING COMPANY OF LOUISIANA, GULF REFINING COMPANY, HUMBLE OIL AND REFINING COMPANY, SHELL OIL COMPANY, INC., FREEPORT SULPHUR COMPANY, and ERNEST COCKRELL, GULF REFINING COMPANY OF LOUISIANA, ET AL., *Respondents.*

No. 770

FRANK FITZGERALD, Trustee for Mt. Forest Fur Farms of America, Inc., *Petitioner,*

v.

ERNEST COCKRELL, His Curator Ad Hoc, BRUCE NUNEZ, and Their Attorneys, S. W. Plauche, and the Law Firm of Herold, Cousin & Herold, *Respondents.*

No. 771

FRANK FITZGERALD, Trustee for Mt. Forest Fur Farms of America, Inc., MORAN CORPORATION OF THE SOUTH and ISAAC S. HELLER, *Petitioners,*

v.

ERNEST COCKRELL, SIDNEY L. HEROLD, SUMTER P. COUSIN and SAMUEL L. HEROLD; and S. W. PLAUCHE and S. W. PLAUCHE, JR., Composing the Law Firm of PLAUCHE & PLAUCHE, *Respondents.*

PETITION FOR REHEARING AND FOR RECONSIDERATION OF PETITION FOR WRITS OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC., THE

MORAN CORPORATION OF THE SOUTH, INC., and ISAAC S. HELLER, respectfully represent unto this Court:

This is a petition for rehearing and for reconsideration of the petition for writs of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit, heretofore filed with this Court and denied by this Court on January 5, 1942.

Petitioner Fitzgerald is a trustee in bankruptcy. The reorganization proceedings in which he was appointed are pending in the United States District Court at Detroit. The principal asset of the debtor corporation is a tract of 52,000 acres of land in Louisiana. The debtor's title is not in dispute. Nor is it disputed that the debtor is in actual physical possession of the surface of the land. The occupancy of a part of the surface of the land by respondent Freeport Sulphur Company arises by virtue of a lease from the debtor corporation, in which its asserted mineral rights are fully reserved. (R. IV—1611.)

The controversy arises over the mineral rights. In Louisiana, as in many states, minerals are considered fugitives, not subject to ownership or possession by anyone, separate and apart from the land of which they form a component part, until severed from the land. The dispute over the minerals can be tersely stated.

Respondent Cockrell owned the land. He contracted to sell it to the debtor

> "subject to a perpetual minerals reservation equal to 1/8 of all minerals . . .". (R. IV—1511)

The deed made in consummation of the contract reserved

> "a perpetual royalty equal to 1/8 of all minerals . . .". (R. IV—1541)

Thereafter, Cockrell made a mineral lease to respondent Gulf who, with Humble and Shell, in turn, subleased to

respondent Freeport. Obviously, Cockrell could not give to the other respondents any greater mineral rights than he had reserved in the deed mentioned above.

Because the debtor was the unquestioned fee simple owner of the land and in actual physical possession of the surface, petitioner, Fitzgerald, immediately following his appointment, filed this suit in the United States District Court at Detroit to protect the property from depletion and to have the debtor's mineral rights judicially determined.

Respondents urged the District Court to relinquish jurisdiction on the authority of *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478, and *Railroad Commission of Texas* v. *Pullman*, 312 U. S. 496, because the record disclosed that a plenary suit was pending (*Mt. Forest et al.* v. *Cockrell et al.*, No. 1190, 25th Judicial District Court, Plaquemines Parish, La., R. IV—1959) in the State court which had jurisdiction over all the parties and where a complete and authoritative adjudication of the entire controversy could be had. This argument prevailed in the Circuit Court of Appeals although the sincerity of the respondents on this point was questioned because they had steadfastly challenged the State court's jurisdiction until after the instant suit was brought.

Now, immediately after the denial of certiorari, having used the State court proceedings solely for the purpose of ousting the Federal Court of jurisdiction, and after the debtor's rights have been substantially affected by statutes of limitation, the respondent, Cockrell, moves to dismiss the State court suit under a non-prosecution statute (Louisiana Civil Code, Section 3519, app. p. 7). It is argued that said motion to dismiss must be granted as a matter of course, notwithstanding the fact that the Trustee in bankruptcy was precluded from participation in that case while

the present case was pending. A copy of said motion is attached in full in the appendix hereto (pp. 5-7).

In *Pennsylvania* v. *Williams,* 294 U. S. 176, it is clearly pointed out that the Federal courts, before they relinquish jurisdiction in favor of the State courts, must be satisfied that the rights of the litigants will not be sacrificed in so doing. An examination of the record in the instant case will disclose clearly that the respondents resisted the jurisdiction of the State court up until after this suit was filed. Then, they admitted jurisdiction of the State court for the very purpose of asking the Federal Court to relinquish jurisdiction. Immediately after the Federal Court relinquished jurisdiction because of the State court proceedings, they now move to dismiss the State court proceedings on the statutory ground of lack of prosecution while the Federal Court proceedings were in process. This would put the petitioner, Fitzgerald, Trustee in bankruptcy of the debtor, in a position where he is required to institute a new suit in the State court after his rights have been materially affected by statutes of limitations. It is submitted that the Federal Court should not relinquish jurisdiction under such circumstances. *Thompson* v. *Magnolia Petroleum Co.,* 309 U. S. 478; *Railroad Commission of Texas* v. *Pullman,* 312 U. S. 496.

Wherefore, for the foregoing reasons your petitioners respectfully urge that a rehearing be granted and that this court reconsider the petition for writs of certiorari heretofore filed herein.

Respectfully submitted,

JACOB I. WEINSTEIN,
ROBERT S. MARX,
FRANK E. WOOD,
EUGENE D. SAUNDERS,
ELDON S. LAZARUS,
ISAAC S. HELLER,
Attorneys for Petitioners.